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TREASURY DEPARTMENT.

Bureau of Customs.

[T. D. 49350]

BONDED WOOL AND CAMEL HAIR

EXTENSIONS OF 3-YEAR PERIOD PRESCRIBED IN PARAGRAPH 1101,
TARIFF ACT OF 1930

JANUARY 15, 1938.

To Collectors of Customs and Others Concerned:

Acting under the authority vested in him by section 318 of the Tariff Act of 1930, 46 Stat. 696 (U. S. C. title 19, sec. 1318), the President on December 29, 1937, issued a proclamation¹ declaring an emergency to exist and authorizing the Secretary of the Treasury—

(1) In the case of wools or camel hair imported or withdrawn from warehouse under bond during the calendar year 1934, under paragraph 1101 of the Tariff Act of 1930, 46 Stat. 646 (U. S. C. title 19, sec. 1001, par. 1101), to extend the period during which proof of use in manufacture may be furnished for not more than 1 year from and after the expiration of the 3-year period prescribed in said paragraph as extended for 1 year under the authority of a proclamation dated December 30, 1936 (T. D. 48774),² and (2) in the case of wools or camel hair imported or withdrawn from warehouse under bond during the calendar year 1935, under paragraph 1101 of the Tariff Act of 1930, to extend the period during which proof of use in manufacture may be furnished for not more than 1 year from and after the expiration of the 3-year period prescribed in said paragraph, subject to the following conditions:

Provided, however, That in each and every case the Secretary of the Treasury shall require that the principal on the bond, in order to obtain the benefits under the extension granted, shall either furnish the collector of customs for the district in which the bond was given the agreement of the sureties on such bond to remain bound under the terms and provisions of the bond to the same extent as if no extension were granted, or furnish an additional bond with acceptable sureties to cover the period of extension.

Pursuant to the authority conferred upon me by the President's proclamation of December 29, 1937, the period during which proof of use in manufacture may be furnished is hereby extended for a period of 1 year in the case of wools and camel hair imported or withdrawn from warehouse under bond during the calendar year 1934 or 1935; and collectors of customs are hereby authorized to permit such proof of use to be furnished (1) within 5 years from the date of importation or withdrawal from warehouse in the case of wools or camel hair imported or withdrawn from warehouse during the calendar year 1934, and (2) within 4 years from the date of importation or withdrawal from warehouse in the case of wools or camel hair imported or withdrawn from warehouse during the calendar year 1935, provided that in

each case the principal on the bond shall either furnish the agreement of the sureties on the bond to remain bound under the terms and provisions of the bond to the same extent as if no extension were granted, or furnish an additional bond with acceptable sureties to cover the period of extension.

[SEAL]

STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[F. R. Doc. 38-218; Filed, January 20, 1938; 3:28 p. m.]

[T. D. 49351]

COUNTERVAILING DUTY—DRIED SALT FISH FROM NOVA SCOTIA
COLLECTORS OF CUSTOMS AUTHORIZED TO ACCEPT CERTIFICATES
FROM ALL UNITED STATES CONSULAR OFFICERS IN NOVA SCOTIA
IN RESPECT OF DRIED SALT FISH

To Collectors of Customs and Others Concerned:

Reference is made to T. D. 49196, dated October 12, 1937, as amended by T. D. 49265, dated November 26, 1937, instructing collectors of customs to impose countervailing duties on importations of certain dried salt fish from Nova Scotia, unless there is filed with the entry a certificate issued by the United States Consul at Halifax, stating that no bounty or grant has been or will be paid or bestowed in respect of such fish.

The said T. D. 49196 is hereby amended by deleting from the last paragraph the words "the United States Consul at Halifax" and substituting therefor the words "a consular officer of the United States stationed in Nova Scotia."

[SEAL]

J. H. MOYLE,
Commissioner of Customs.

Approved: January 18, 1938.

STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[F. R. Doc. 38-220; Filed, January 21, 1938; 12:43 p. m.]

Bureau of Internal Revenue.

[T. D. 4792]

INCOME TAX

ARTICLE 23 (P)—1 OF REGULATIONS 94 AMENDED

To Collectors of Internal Revenue and Others Concerned:

Article 23 (p)—1 of Regulations 94¹ is amended to read as follows:

"ART. 23 (p)—1. *Payments to employees' pension trusts.*—An employer claiming the benefit of the deduction allowable by section 23 (p) must show himself entitled to such deduction. In no case will any amount be allowed as a deduction

¹ 2 F. R. 3448 (DI).

² 2 F. R. 27, 182 (DI).

¹ 2 F. R. 2593, 2985 (DI).

² 1 F. R. 1839.

To be corrected on the doc. by

FEDERAL REGISTER

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OF THE UNITED STATES
1934

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TABLE OF CONTENTS

Securities and Exchange Commission:	
Order for hearing, etc., offering sheet by:	Page
Sulzbach, Fred X. (Marlarnce & Shelton-Flowers Tract)	223
Treasury Department:	
Bureau of Customs:	
Bonded wool and camel hair, extension of 3-year period	221
Countervailing duty—Dried salt fish from Nova Scotia	221
Bureau of Internal Revenue:	
Income tax, Regulations 94 amended relative to payments to employees' pension trusts	221

for the taxable year under section 23 (p) and this article which was allowable as a deduction from gross income for any prior year. An employer who adopts or has adopted a reasonable pension plan, actuarially sound, and who establishes, or has established, and maintains a pension trust for the payment of reasonable pensions to his employees (if the trust is exempt from tax under section 165, relating to trusts created for the exclusive benefit of employees) shall be allowed to deduct from gross income reasonable amounts paid to such trust, in accordance with the pension plan (including any reasonable amendment thereof), as follows:

"(a) If the plan contemplates the payment to the trust, in advance of the time when pensions are granted, of amounts to provide for future pension payments, then (1) amounts paid to the trust during the taxable year representing the pension liability applicable to such year, determined in accordance with the plan, shall be allowed as a deduction for such year as an ordinary and necessary business expense, and in addition (2) one-tenth of a reasonable amount transferred or paid to the trust during the taxable year to cover in whole or in part the pension liability applicable to the years prior to the taxable year, or so transferred or paid to place the trust on a sound financial basis, shall be allowed as a deduction for the taxable year and for each of the nine succeeding taxable years;

"(b) If the plan does not contemplate the payment to the trust, in advance of the time when pensions are granted,

of amounts to provide for future pension payments, then (1) amounts paid to the trust during the taxable year representing the present value of the expected future payments in respect of pensions granted to employees retired during the taxable year shall be allowed as a deduction for such year as an ordinary and necessary business expense, and in addition (2) one-tenth of a reasonable amount transferred or paid to the trust during the taxable year to cover in whole or in part the present value of the expected future payments in respect of pensions granted to employees retired prior to the taxable year, or so transferred or paid to place the trust on a sound financial basis, shall be allowed as a deduction for the taxable year and for each of the nine succeeding taxable years.

"The right to a deduction under section 23 (p) will be recognized in cases where the pension trust may not be perpetual, provided the trust is of such a character as to evidence good faith on the part of the employer actually to pay the amounts placed in trust for employees' pension purposes. However, should any portion of the funds of a pension trust revert to the possession, ownership, or control of the employer by reason of the termination of the trust or otherwise, such amount (except to the extent that it represents a payment to the pension trust made by the employer in accordance with the pension plan and pursuant to paragraph (a) or (b) of this article, and not theretofore allowed as a deduction to the employer) shall be returned as income by the employer for the taxable year in which it so reverts, unless prior to the close of such year it shall again be placed in trust for the benefit of employees under provisions satisfactory to the Commissioner.

"Reasonable payments made by an employer during the taxable year directly to pensioners on account of pensions in respect of which no payment has been made to a pension trust shall be allowed as a deduction from gross income for such year as an ordinary and necessary business expense.

"Devices of whatever nature for withdrawing profits or paying salaries to officers are not pension trusts within the meaning of the Act and this article.

"A pension trust maintained by affiliated corporations for the exclusive benefit of their employees is within the scope of sections 23 (p) and 165.

"The application of section 23 (p) may be illustrated by the following examples:

Example—Accruals in advance of pensions granted: In 1936 the M Company adopted a reasonable pension plan and established a pension trust which was exempt from tax under section 165. During the year and upon the basis of an actuarial computation the company paid \$8,950,000 to the trust. At the time of the payment and in accordance with the pension plan of the company, the pension liability applicable to the years prior to 1936, in respect of employees then on the retired roll, for pensions to be paid in the future, was \$2,000,000; the pension liability applicable to the years prior to 1936, in respect of employees on the active roll, for pensions to be paid in the future, was \$6,500,000; the payment required to cover the pension liability applicable to the taxable year 1936 for pensions to be paid in the future, was \$450,000. The amount paid to retired employees of the M Company by the pension trust as pensions during 1936 was \$360,000.

"The deduction for 1936 is computed as follows:

(a) Entire amount paid to pension trust representing the pension liability applicable to 1936 for pensions to be paid in the future	\$450,000
(b) One-tenth of \$8,500,000, amount transferred to pension trust to cover the pension liability applicable to the years prior to 1936, in respect of employees on either the retired roll or the active roll, for pensions to be paid in the future	850,000
Total deduction	1,300,000

"The amount of \$360,000 paid to pensioners is not allowable as a deduction for income tax purposes since it was paid by the pension trust and not by the M Company.

"Example—Accruals on basis of pension granted.—In 1936 the N Company adopted a reasonable pension plan and established a pension trust which was exempt from tax under section 165. During the year and upon the basis of an actuarial computation the company paid \$2,300,000 to the trust. At the time of the payment the present value of the expected future payments in respect of pensions granted to employees retired prior to 1936 was \$2,000,000; the present value of the expected future payments in respect of pensions granted to employees retired during 1936 was \$300,000. The amount paid to retired employees of the N Company by the pension trust as pensions during 1936 was \$360,000.

"The deduction for 1936 is computed as follows:

(a) Entire amount paid to the pension trust representing the present value of the expected future payments in respect of pensions granted to employees retired during 1936.....	\$300,000
(b) One-tenth of \$2,000,000, the amount transferred to the pension trust to cover the present value of the expected future payments in respect of pensions granted to employees retired prior to 1936.....	200,000
Total deduction.....	500,000

"The amount of \$360,000 paid to pensioners is not allowable as a deduction for income tax purposes, since it was paid by the pension trust and not by the N Company."

Regulations 94 are further amended by adding after article 23 (p)-1, as amended, the following article:

"ART. 23 (p)-2. Information to be furnished by employer claiming deductions.—If a deduction from gross income is claimed under section 23 (p) in an income return or in a claim for refund on account of payments to an employee's pension trust, the employer shall file with such return or claim for refund a statement describing the pension trust plan, including the basis and method of its operation, together with a copy of the trust indenture, with any amendments thereto, and other documents constituting a part of the plan. If all employees are not included as beneficiaries of the pension trust, a statement showing what classes of employees are excluded, and the general nature of their respective employment and duties, together with the reason why all employees are not covered by the pension trust plan, shall likewise be filed. If such statements have once been filed and if the return contains a statement when and where such statements were filed, they need not again be filed; but, however, if changes in the pension trust plan have been made, a statement showing the nature of such changes (together with copies of any amendments to the trust indenture and other documents constituting a part of the plan) must be filed with the return for the first taxable year for which allowance of deductions under section 23 (p) may be affected by such changes in the pension trust plan.

"In addition the following described data and information shall be kept at all times available for inspection by internal revenue officers at the main office or principal place of business of the employer:

"1. Schedules or work sheets showing the derivation of the basic valuation factors, or, if such data are not available, a statement giving the source of the factors from which the actuarial valuations were made.

"2. (a) Schedules showing the computation of the reserve liability for all employees in the active service as determined from the most recent actuarial valuation. For taxable years beginning after December 31, 1936, the most recent actuarial valuation, for the purposes of this article, means such a valuation made not earlier than five years prior to the filing of the return.

"(b) A similar schedule based on the next preceding valuation if such a valuation has been made.

"3. A schedule showing by ages the individual current liability factors and the application of these factors in determining the liability accrued during the current taxable year.

"4. (a) A schedule showing the computation of the pension liability for all employees retired on pension at the date of the last actuarial valuation.

"(b) A schedule showing, by calendar years, the present value of pensions granted from the date of the last actuarial valuation to the end of the taxable year for which the deduction is claimed in an income return or in a claim for refund.

"5. A schedule showing the receipts and disbursements of the pension fund during each taxable year carried forward from the date the pension trust was established. The receipts should include the accruals mentioned in paragraph 3, interest, and any other monies credited to the fund. The disbursements should include actual pension payments made to retired employees and any other expenditures charged to the pension fund.

"If the valuation factors are changed at any time, either because of a change in the pension plan or because of a change in the assumptions upon which the valuation factors are based, the data indicated under 2, 3, and 4 above should be available showing the application of both the old and the new valuation factors to the payroll as of the valuation date coinciding with or next following the date of the change.

"If the pension plan does not contemplate the payment to the trust in advance of the time when pensions are granted, of amounts to provide for future pension payments, the data described under 2 and 3 above need not be furnished."

This Treasury Decision is issued under the authority contained in section 62 of the Revenue Act of 1936.

[SEAL]

CHAS. T. RUSSELL,

Acting Commissioner of Internal Revenue.

Approved: January 18, 1938.

ROSWELL MAGILL,

Acting Secretary of the Treasury.

[F. R. Doc. 38-219; Filed, January 21, 1938; 12:48 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 20th day of January, A. D. 1938.

IN THE MATTER OF AN OFFERING SHEET OF PRODUCING LAND-OWNERS' ROYALTY INTERESTS IN THE MARLARNEE & SHELTON-FLOWERS TRACT, FILED ON DECEMBER 20, 1937, BY FRED X. SULZBACH, RESPONDENT

ORDER FOR HEARING AND ORDER DESIGNATING TRIAL EXAMINER

Fred X. Sulzbach, having filed on December 20, 1937, with the Securities and Exchange Commission, an offering sheet for the purpose of obtaining an exemption from registration for the securities described therein under Regulation B of the General Rules and Regulations under the Securities Act of 1933, as amended; and

The Securities and Exchange Commission, having reasonable grounds to believe, and, therefore, alleging that said offering sheet is incomplete or inaccurate in a material respect, or contains an untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein contained not misleading, or fails to comply with the requirements of said Regulation B, to wit:

In that the information given under Division II, Item 20 (b) concerning the percentage of water in fluid produced is not correctly stated;

It is ordered, Pursuant to Rule 340 (b) of the General Rules and Regulations under the Securities Act of 1933, as amended, that an opportunity for hearing be given to the said respondent.

ent for the purpose of determining the material completeness or accuracy of the said offering sheet in the respects in which it is herein alleged to be deficient and/or misleading, and whether the effectiveness of the filing of the said offering sheet shall be suspended; and

It is further ordered, That Charles S. Lobingier, an officer of the Commission be, and hereby is, designated as Trial Examiner to preside at such hearing, to continue or adjourn the said hearing from time to time, to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, consider any amendments to said offering sheet as may be filed prior to the conclusion of the hearing, and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or mate-

rial to the inquiry, and to perform all other duties in connection therewith authorized by law; and

It is further ordered, That the taking of testimony in this proceeding commence on the 4th day of February, 1938, at 10 o'clock in the forenoon, at the office of the Securities and Exchange Commission, 18th Street and Pennsylvania Avenue, Washington, D. C., and continue thereafter at such times and places as said Examiner may designate.

Upon completion of testimony in this matter the Examiner is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 38-221; Filed, January 21, 1938; 12:57 p. m.]